

DETAILED ACTION

1. **Claims 1-26 are cancelled.**
2. **Claims 27-52** have been examined on merits and are pending in this application.

Priority

3. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 10524731 filed on 02/16/2005.

Information Disclosure Statement

4. The information disclosure statement (IDS) submitted on 02/16/2005, is being considered by the examiner.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. **Claim 51** rejected under 35 U.S.C. 101 as claimed invention is directed to non-statutory subject matter.

Claim 51 directed to "*management data processing program*", which does not constitute statutory subject matter such as a process, machine, article of manufacture or composition or matter. In contrast, a claimed computer-readable storage medium

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having instructions is a computer element which defines structural and functional interrelationships between the instructions and the computer to permit the instructions' functionality to be realized, and is thus statutory. Also see pages 30 and 53 of the Interim Guidelines for Examination of Patent applications for Patent Subject Matter Eligibility.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 27-52** rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 7020704 to Lipscomb; Kenneth O. et al., (hereinafter "Lipscomb").

As to Claims 27, and 51-52, Lipscomb teaches, system, method and management data processing program comprising at least one content server including at least one processor, means for storing data, and at least one network interface (as stated in col. 1, lines 33-36, col. 3, lines 56-61, system and method for distributing digital media assets to a plurality of users. A portal is provided comprising at least one server computer. With reference to FIG. 3, a basic architecture for the portal 300 is

described. The components of the portal 300 are a hardware platform 310, such as one or more computer servers, an operating system 320 that is executed by the hardware platform 310, a master media library database (server) application 330 and a broadband interface 340);

at least one terminal device including at least one processor, means for storing data, and at least one network interface (as stated in col. 1, lines 39-42, col. 2, lines 49-52, Each of a plurality of media player devices communicates with the portal to access media assets for use. Each media player device assists in managing media assets licensed for use by a user. Media player device 200 comprises a processor that executes a media playback software application program (or alternatively hardware) to enable a user to play or use a digital media asset, such as music, video, games, etc.);

one network, by which the at least one content server and the at least one terminal device are in data connection by their respective network interfaces, wherein the content server further includes a management data processing program configured to make specific audio files available to specific terminal devices (as stated in col. 1, lines 36-39, lines 49-52, The portal executes a media library database server application that manages access to a master library of media assets that can be accessed by users via one or more communication networks, FIG. 1 is an overall block diagram of the system, FIG. 2 is a block diagram depicting the flow of media asset data),

wherein the at least one terminal device further includes a media output channel for output of audio files, wherein the at least one terminal device periodically and self-

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dependently gets/fetches from the content server the audio files made available specifically for the terminal device by a TCP/IP protocol, or updates them, respectively, and wherein the terminal device outputs the audio files depending on a direction protocol that is saved in the terminal device continuously, or in repetition, or only once, by the media output channel (as stated in col. 2, lines 37-48, col. 10, lines 10-14, col. 3, lines 48-51, A media player device 200 is a device that enables a user to play a digital media asset. The media player device 200 may be a home consumer device 210 that connects to a television or other monitor 215 as well as a home stereo 217 (amplifier/tuner, etc.) which in turn is connected to speakers 219, a personal computer (PC) 220 (laptop or desktop), a vehicle-based electronic device 225, a portable media player device 230, or a wireless electronic device 235. The media player is also referred to as a client media player insofar as it acts as a client to the portal 300 in some circumstances. An example of still another type of media player is a cable set-top box. The media player device contacts the portal periodically (such as daily, multiple times during the day, etc.) or on demand to synchronize its database application with that of the portal. A network protocol, such as for example XML-RPC is used to synchronize the databases. The portal 300 communicates with media player devices 200 via communication network 400 that may consist of the Internet and/or a combination of wireless communication networks, such as cellular networks, PCS networks, etc.).

As to Claim 28, Lipscomb teaches, system according to claim 27, wherein the network and/or the network connection includes wire technology or wireless technology

(as stated in col. 2, lines 37-48, The portal 300 connects to the media asset sources 100 by any suitable means, such as the Internet, dedicated telecommunication lines, wireless networks, dedicated wide area networks, or any combination thereof. The terminology "electronically transmitting" a digital media asset is meant to include wired and/or fiber communication, wireless communication, and any long-distance or short range communications (IEEE 802.11, HomeRF, BlueTooth.TM.) or combinations thereof. In addition to downloading or streaming media assets stored locally to the portal 300, the portal 300 connects to media asset sources 100 and downloads and/or streams media assets from those sources to media player devices 200).

As to Claim 29, Lipscomb teaches, system according to claim 27, wherein the network connection includes a modem (as stated in col. 2, lines 57-62, The media player device 200 of the home consumer device 210 variety may resemble a consumer electronics DVD player, that also connects to the Internet via broadband and/or modem. A broadband connection affords the ability of the media player device 200 to download audio and video media assets at desirable rates).

As to Claim 30, Lipscomb teaches, system according to claim 29, wherein the terminal device automatically dials a point of presence (POP) via the modem for establishing a network connection (as stated in col. 10, lines 6-12, The client database in the media player and the master media library database communicate and interact to provide automatic replication and synchronization. The media player device contacts

the portal periodically (such as daily, multiple times during the day, etc.) or on demand to synchronize its database application with that of the portal).

As to Claim 31, Lipscomb teaches, system according to claim 27, wherein the transmission of the data takes place via HTTP, FTP, SSL, TLS, or SMTP protocols (as stated in col. 3, lines 48-51, col. 4, lines 63-67, col. 5, lines 1-17, The portal 300 communicates with media player devices 200 via communication network 400 that may consist of the Internet and/or a combination of wireless communication networks, such as cellular networks, PCS networks, etc. Variety of functions and capabilities provided by the Portal system using network communication protocols for services, such as:

Interactive Services

- 1. Email***
 - i. Send & Receive Email***
 - ii. Third-Party hosting***
 - iii. Standard POP3 Compliant***
- 2. Chat***
 - i. Provide Chat rooms for various topic discussions***
 - ii. Provide Chat Cafe with background music***
 - iii. Allow for password protection***
- 3. Web Browsing***
 - i. Hot-link to other sites from portal***
 - ii. Track URL paths for insertion into database--(i.e.--link a song)***
 - iii. Browser may be tailored for TV and control by wireless keyboard and/or mouse***
- 4. News Groups***
 - i. Allow for the creation of vertical news groups***
 - ii. Allow for interactive input***
- 5. Games***
 - i. Provide for on-line gaming***
 - ii. Third-party pass-through).***

As to Claim 32, Lipscomb teaches, system according to claim 27, wherein the transmission of the data takes place via HTTP, and further protocols for the communication with proxy servers or for the transmission of data via proxy server from

and to the content server can be supported or configured, respectively (as stated in col. 2, lines 10-28, col. 3, lines 17-21, Referring to FIGS. 1 and 2, the present invention is directed to a system 10 for distributing digital media assets from a variety of media sources 100 to a variety of media player devices 200 through a portal 300. Examples of media sources 100 are a webretailer 105, a music or video production or distribution studio 110, a video server 115 containing a library of video assets such as movies and other video productions from one or more production companies, an audio server 120 containing a library of audio assets such as music and other audio productions from one or more record companies and a web site 125 for an online and/or brick&mortar media asset company. In addition, artists not affiliated with a mainstream production company may make their video and/or audio assets available from a host server or their own servers. The portal 300 connects to the media asset sources 100 by any suitable means, such as the Internet, dedicated telecommunication lines, wireless networks, dedicated wide area networks, or any combination thereof. The portal 300 is computer server or group of servers that functions to allow for the storage, stream and download of media assets to a media player 200. In addition, as described above the portal 300 provides connections to other source sites, such as sources of streaming Internet radio providers).

As to Claim 33, Lipscomb teaches, system according to claim 27, wherein the at least one terminal device is provided with, as a media output channel, a loudspeaker and/or a head phone jack, and/or one or plural connectors for connection of local

telephones and/or a local telephone system, wherein in a case of such a telephone connector at least one interface for connection to an external telephone line is provided (as stated in col. 2, lines 37-48, col. 10, lines 10-14, col. 3, lines 48-51, col. 6, lines 34-37, col. 7, lines 7-18, A media player device 200 is a device that enables a user to play a digital media asset. The media player device 200 may be a home consumer device 210 that connects to a television or other monitor 215 as well as a home stereo 217 (amplifier/tuner, etc.) which in turn is connected to speakers 219, a personal computer (PC) 220 (laptop or desktop), a vehicle-based electronic device 225, a portable media player device 230, or a wireless electronic device 235. The media player is also referred to as a client media player insofar as it acts as a client to the portal 300 in some circumstances. An example of still another type of media player is a cable set-top box. The media player device contacts the portal periodically (such as daily, multiple times during the day, etc.) or on demand to synchronize its database application with that of the portal. A network protocol, such as for example XML-RPC is used to synchronize the databases. The portal 300 communicates with media player devices 200 via communication network 400 that may consist of the Internet and/or a combination of wireless communication networks, such as cellular networks, PCS networks, etc. The media player device receives its media assets via broadband demand download or stream, traditional phone line download or stream from the portal and/or other media partners. As shown in FIG. 5, the front panel comprises the display 2262, user interface buttons 2264, a power on/off switch 2268, and the tray or slot for the removable memory media drive 2400. In addition, a swing-open door reveals (not shown) USB

type `A` stacked ports, IEEE-1394 port, PC-Card ports, Smart Card port, and 1/4" headphone audio jack with headphone volume adjustment knob. The rear panel is shown in FIG. 6. The rear panel exposes the I/O connections 2110, including, USB, LAN, PHONE LINE IN, SERIAL, VGA OUT, Composite Video IN, S-Video IN, Audio OUT Left, Audio OUT Right, Composite Video OUT, S-Video OUT, Digital Audio, AC .about.120V).

As to Claim 34, Lipscomb teaches, system according to claim 33, wherein the terminal device is configured to receive incoming calls via the external telephone line and to put the received calls into an on hold loop, which is structured in function of a state of a local telephone system or of local telephones and/or depending on specific input, and which plays at least one audio file in accordance with a direction protocol if need be in an interactive manner (as stated in col. 2, lines 37-48, If a media player device is stolen or missing, in step 505, a user contacts the portal electronically via email, via telephone, etc., and reports that the media player device is stolen or missing. In step 510, the portal puts the user's account on hold and issues the user a confirmation code. The user is then instructed to power cycle each of his/her media player devices. In step 515, the user's media players contact the portal in attempt to synchronize with the portal. Before synchronizing, in step 520, the portal will cause the media player to ask the user for the confirmation code since the user's account has been put on hold. In step 525, the portal determines whether the correct confirmation code has been received from the media player device. If it has, the media player device

is enabled for use in step 530. If the correct confirmation code is not received from a user of a media player device after a certain number of attempts, that media player device is disabled and no longer usable unless completely re-enabled).

As to Claim 35, Lipscomb teaches, system according to claim 27, wherein the protocol in the terminal device controls the output or play-back of the audio files with respect to sequence and/or time (as stated in col. 9, lines 40-60, Any music or video file in the media player can have an extensive database of MetaData referenced to it. This data can be referenced in many views and may include images, lyrics, notes, rights restrictions, and URLs. All data is searchable and reportable and is incorporated into client database of media player device. Playback Features include: View as text list, small icon or large icon views. Drag & drop building. Compute total playing time for making CDs timed list for events. Loop play list. Play with scan mode to listen to "x" seconds of a song or video).

As to Claim 36, Lipscomb teaches, system according to claim 27, wherein the terminal devices further periodically and self-dependently fetches and/or updates direction protocols made available on the content server specifically for each individual terminal device and/or a current time (as stated in col. 10, lines 10-14, The media player device contacts the portal periodically (such as daily, multiple times during the day, etc.) or on demand to synchronize its database application with that of the portal. A network protocol, such as for example XML-RPC is used to synchronize the databases).

As to Claim 37, Lipscomb teaches, system according to claim 27, wherein the terminal devices transfer a signature, version, or check sum as a confirmation to the content server in a case of complete download of audio files or direction protocols, respectively (as stated in col. 11, lines 34-39, A digital media asset may be encrypted for general protection when the asset is first entered as an object within the main library database server. Upon the request for download (or streaming access) by a user, the asset may be watermarked to coincide with the serial number of the user's family of client media player devices. Each client media player device that the user owns becomes a licensed playback device for his or her registered multimedia assets if the scope of that license so permits).

As to Claim 38, Lipscomb teaches, system according to claim 37, wherein accesses having taken place or transmitted, respectively, and/or the transactions and/or the signatures and/or the versions and/or the check sums from the terminal devices are logged on the content server in the management data processing program, and on the content server a state of a system of a whole system or of individual terminal devices can be checked by using a web browser (as stated in col. 4, lines 33-54, The portal 300 may be used to add, edit, or delete a user in an account. It may be used to create, edit, or delete a play list of assets, as well as add or delete particular audio or video assets. The portal may be used to edit the metadata associated with an asset (e.g., edit the title, artist genre classification of a song or the title, actor's name or director of a movie

There are a variety of functions and capabilities provided by the system associated with the process of acquiring assets, such as those listed below. i. Stream Asset ii. Download Asset iii. Find/Search Master Database iv. Get Usage History v. Set Access Privileges--time, date, type, rating, number, etc. vi. Check account status--active, limited, etc. vii. Log activity--detailed request database viii. Log Errors per user ix. Log Errors per title).

As to Claim 39, Lipscomb teaches, system according to claim 27, wherein requests of the terminal devices on the content server are substantially equally distributed by attribution of staged request times (as stated in col. 4, lines 33-54, There are a variety of functions and capabilities provided by the system associated with the process of acquiring assets, such as those listed below. i. Stream Asset ii. Download Asset iii. Find/Search Master Database iv. Get Usage History v. Set Access Privileges--time, date, type, rating, number, etc. vi. Check account status--active, limited, etc. vii. Log activity--detailed request database viii. Log Errors per user ix. Log Errors per title).

As to Claim 40, Lipscomb teaches, system according to claim 27, wherein the individual terminal devices and/or the content server can be configured by a web browser and can be checked in respect of their status by the web browser (as stated in col. 3, lines 56-63, lines 29-31, With reference to FIG. 3, a basic architecture for the portal 300 is described. The components of the portal 300 are a hardware platform 310, such as one or more computer servers, an operating system 320 that is executed by the

hardware platform 310, a master media library database (server) application 330 and a broadband interface 340. An example of a web site home page through which a user interacts with the portal 300 is shown in FIG. 4. The portal 300 may be accessible directly from a media player device and through one or more web sites and may provide a customizable interface or view to each user).

As to Claim 41, Lipscomb teaches, system according to claim 27, wherein the terminal devices are further configured for direct streaming of audio files from the content server (as stated in col. 8, lines 32-35, In Internet Streaming Mode, the media player device interacts with an Internet-based source for music or video, such as the portal or other sites capable of streaming audio or video data).

As to Claim 42, Lipscomb teaches, system according to claim 27, wherein the terminal devices further include at least one local interface, by which an output of specific audio files or a combination of audio files, in a form of messages and/or music files, can be triggered, wherein direction protocols specifically made available in the terminal device are attributed to the local interfaces, wherein the protocols are coordinating a sequence of audio files upon activation of the local interfaces (as stated in col. 8, lines 1-15, The media player software engine provides the media playback functionality for the media player device. An example of the user interface provided by the media player software engine is shown in FIG. 8. There are icons associated with audio, video and web resources as well as one or more areas dedicated to

advertisements and links. In addition, at the bottom of FIG. 8 are shown icons associated with the basic playback functions of a media asset, such as audio or video. There are several modes of operation that are controlled by the media player software engine described below. It should be understood that the media player software engine allows multiple modes to be performed at the same time. For example, a user, while using a media asset, may perform other functions such as web browsing or organizing a media asset library, etc).

As to Claim 43, Lipscomb teaches, system according to claim 27, wherein the terminal devices are equipped in embedded technology with internal flash memory (as stated in col. 7, lines 19-33, As shown in FIG. 7, a motherboard assembly 2100 comprises the CPU 2120, memory 2130, special purpose chip sets 2140, and I/O connectors 2110. All processing excluding a processor on the display circuit assembly 2260 is controlled by the motherboard. Examples of the special purpose chip sets 2140 are Integrated Video Chipset with NTSC/PAL, S-Video, and SVGA out, Macrovision CSS for NTSC/PAL and S-Video Out, Integrated Stereo Audio Chipset with Stereo Line out, Integrated DVD/MPEG Video decoder hardware, Integrated DVD/MPEG Audio decoder hardware, 10Base-T Ethernet, 56 Kb V.90 modem, USB hardware to support 2 Type 'A' ports on rear, USB hardware to support 2 Type 'A' ports on front, IEEE-1394 hardware to support one front port, hardware to support 1 internal serial port (header), hardware to support 2 IDE drive ports (2 headers, 4 devices total)).

As to Claim 44, Lipscomb teaches, system according to claim 27, wherein the terminal devices are provided with a memory extension by commercially available memory media of at least one of compact flash, memory stick, SD card, or MMC card (as stated in col. 7, lines 6-13, As shown in FIG. 5, the front panel comprises the display 2262, user interface buttons 2264, a power on/off switch 2268, and the tray or slot for the removable memory media drive 2400. In addition, a swing-open door reveals (not shown) USB type `A` stacked ports, IEEE-1394 port, PC-Card ports, Smart Card port, and 1/4" headphone audio jack with headphone volume adjustment knob).

As to Claim 45, Lipscomb teaches, system according to claim 44, wherein the memory media are configured to be charged/recorded and modified on a commercially available PC or adapter (as stated in col. 6, lines 65-67, col. 7, lines 1-4, A removable memory media drive device, such as DVD-ROM drive assembly 2400, or other suitable removable memory media drive device heretofore known or hereinafter developed is provided. The "DVD" format is an example of a suitable drive assembly. Others removable memory media drive devices are CD-read, CD-read/write, DVD audio, DVD read/write, etc).

As to Claim 46, Lipscomb teaches, system according to claim 27, wherein in addition to the audio files, analogously graphic files are managed, which are output at the terminal device in coordination with the audio files (as stated in col. 9, lines 3-30, From within the media player a user can access various Internet sites and download

music and video assets. Alternately, a user can access secure items from the portal that integrate into the user's virtual media asset library. Digital video can be played back in a small window or full screen. The playback window is resizable for user preference. Examples of digital video formats are, MPEG 1, 2 & 4, and QuickTime formats on Windows and Macintosh. Standard CDs can be played and recorded on the media player device. Features include: Listen while record. Security restrictions for upload to portal. Record to MP3 or other proprietary or non-proprietary format. CD's title is automatically identified from an identification database that is either local to the portal or is remotely accessed by the portal via the Internet. Maintain local CD recognition database of personal CD names, titles, tracks and other information. Lyrics can be automatically added as MetaData from various servers (local or remote) that provide lyric information. Store CD information in local database. Maintain CD library catalog in database. JPEG, BMP & PICT album covers can be associated. Full CD control functionality. Similar functions can be provided for DVD and Video CD playback).

As to Claim 47, Lipscomb teaches, system according to claim 27, wherein the management data processing program is programmed on the content server as a script solution (as stated in col. 5, lines 59-62, The media player engine 280 may include interfaces to third party software for certain functions and features. The media library database server application 330 and the database client application 270 are, for example, database software products).

As to Claim 48, *Lipscomb teaches, system according to claim 27, wherein the management data processing program is coded as an independent software package on the content server with integrated web server in C#, Java, or in another programming language (as stated in col. 5, lines 62-67, media player engine 280 comprises software, such as Java.RTM. and C++ code for playing back audio and video assets on an operating system platform 260. The operating system 260 may be Windows.RTM., Macintosh.RTM., Linux.TM. or other operating platforms, which may include Internet browser capability or interfaces to a resident Internet browser application. Some or all of the media player engine 280 may be based on a platform portability software, such as Java.RTM).*

As to Claim 49, *Lipscomb teaches, Use of a system according to claim 27 as an on hold center in a telephone network, for generation of background music, for management of audio information and audio advertisement, respectively, and/or for specific output of messages on specifically provided information posts (as stated in col. 5, lines 25-37, The portal includes advertisement server software functionality to allow for third-party advertisement submission, deletion and maintenance. The portal automatically inserts an ad into download stream, and selects an advertisement based on user profile information when allowable. Advertisement usage and user profile information is continuously tracked. The portal generates detailed usage reports for the operator of the system as well as for the advertiser. The advertisements may include*

URL "hotlinks" within an advertisement window, as is well known in the art. In addition, the portal allows for personalized/customized advertisement generation).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 6345256 to Milsted; Kenneth Louis et al., US Patent No. 6389467 to Eyal; Aviv, and US Patent No. 7278165 to Molaro; Donald Joseph, are cited for reference purpose only.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Muktesh G. Gupta whose telephone number is 571-270-5011. The examiner can normally be reached on Monday-Friday, 8:00 a.m. -5:00 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William C. Vaughn can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenton B. Burgess/
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